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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,926	12/09/2003	Philip J. Robinson	18388 USA	6652
27081	7590	02/22/2007	EXAMINER	
OWENS-ILLINOIS, INC. ONE MICHAEL OWENS WAY, THREE O-I PLAZA PERRYSBURG, OH 43551-2999			SMALLEY, JAMES N	
		ART UNIT	PAPER NUMBER	
		3781		
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE		DELIVERY MODE	
3 MONTHS	02/22/2007		PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/731,926	ROBINSON, PHILIP J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	James N. Smalley	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 November 2006.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-9, 11 and 14 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-9, 11 and 14 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08 November 2006 has been entered.

### ***Claim Objections***

2. Claim 7 is objected to because of the following informalities: In line 1, the phrase "of\_said" requires correction.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 rejected under 35 U.S.C. 102(b) as being anticipated by Montgomery US 4,213,534.

In the embodiment of figures 3-4, Montgomery '534 teaches an outer peripheral sidewall (22), an inner sidewall (21), and a set of diametrically opposed locking lugs (26). Examiner furthermore notes figure 4, whereby it can be clearly seen locking lug (26) has a U-shaped - - and thus arcuate - - profile about its inner edge with the closure outer wall sidewall. Furthermore, Examiner notes figure 3, whereby it can be clearly seen the lug extends the height of the closure sidewall.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery US 4,213,534 in view of Kusz US 5,687,863.

Regarding claim 3, Montgomery '534 fails to teach the container being formed of a polypropylene-based material.

Kusz '863 teaches it is known to form "squeeze-and-turn" containers of polypropylene as disclosed in column 2, line 39. It is known to form containers of polypropylene because of the ease of molding, combined with the flexibility of the material permitting deformation of the closure in order to disengage the lugs and permit opening of the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container and closure of Montgomery '534, forming it of polypropylene, as taught to be known by Kusz '863, motivated by the benefit of forming the container from a material known for its ease of molding, combined with the flexibility of the material permitting deformation of the closure in order to disengage the lugs and permit opening of the container. Furthermore, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 7, Montgomery '534 fails to teach the body portion being oval in cross-section, and the lugs positioned along a minor axis.

Kusz '863 teaches a container body (22) oval in cross-section and having lugs (52) positioned on a minor axis.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Montgomery '534, forming it to be ovoidal in cross-section, and providing

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the lugs on the minor axis, as taught by Kusz '863, because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

6. Claims 4-8 and 11 rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery US 4,213,534 in view of Robinson US 5,915,576.

Montgomery '534 fails to teach an inwardly tapered upper portion of the cap, an outwardly tapered lower portion with grip pads, and which is thicker than the underlying portion of the sidewall.

Robinson '576 teaches an inwardly tapered upper portion of the cap (unlabeled; best seen in figure 2) an outwardly tapered lower portion (42) with grip pads (90), and which is thicker than the underlying portion of the sidewall.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the outer wall of the closure of Montgomery '534, forming it in the shape taught by Robinson '576, because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery US 4,213,534 in view of Robinson US 5,915,576 as applied above to claim 8 and further in view of Kusz US 5,687,863

Montgomery '534 fails to teach the container being formed of a polypropylene-based material.

Kusz '863 teaches it is known to form "squeeze-and-turn" containers of polypropylene as disclosed in column 2, line 39. It is known to form containers of polypropylene because of the ease of molding, combined with the flexibility of the material permitting deformation of the closure in order to disengage the lugs and permit opening of the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container and closure of Montgomery '534, forming it of polypropylene, as taught to be known by Kusz '863, motivated by the benefit of forming the container from a material known for its

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ease of molding, combined with the flexibility of the material permitting deformation of the closure in order to disengage the lugs and permit opening of the container. Furthermore, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

#### **Response to Arguments**

8. Applicant's arguments filed 08 November 2006 have been fully considered but they are not persuasive.

a) **Applicant argues Montgomery fails to teach an arcuate path between the inner surface of the outer sidewall and a free end of the locking lugs.**

Examiner notes the invention of Montgomery '534 "comprises" an arcuate path -- read to be the arcuate angle between the locking lug and the sidewall, because the term comprising can include elements beyond those which are claimed.

b) **Applicant submits a Declaration noting in section 3 that Applicant has received favorable comments from customers and potential customers of the manufacturer, and further notes in section 5 that the instant invention permits "a closure/neck combination with a size of 24 mm."**

Examiner notes there is no associated dimension either in the Declaration or within the instant Specification which is to be formed to 24 mm, i.e. a neck diameter, radius, height, etc. Therefore, the Examiner is not capable of determining whether the prior art is capable of being formed to 24 mm. Regardless, it is not clear what structural advantage permits the instant invention to be formed to 24 mm. Examiner notes section 5 of the Declaration merely states the instant invention can be formed to 24 mm and that the prior art cannot, without offering any substantial evidence. However, the arguments presented therein are not persuasive because MPEP 716.03(a) states that commercial success must be due to claimed features and not to unclaimed features. Examiner notes the claimed invention has been properly rejected under 35 U.S.C. 102(b) and 103(a). Furthermore, Examiner notes should Applicant amend the claims to include the provision of forming the closure and container to 24 mm or to any other

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dimension, a rejection under 112, 2<sup>nd</sup> paragraph would be issued due to the fact that the Specification fails to teach exactly which dimension is to be formed to that or any other size.

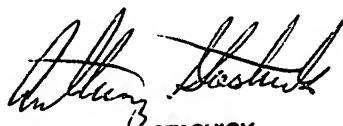
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jns



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